

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B06

PLR-110680-15

Date:

September 21, 2015

Legend

Taxpayer =

Shareholder =

Individual A =

Individual B =

Individual C =

Corporation A =

Corporation B =

Accounting Firm =

Consulting Firm =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This responds to a letter dated February 3, 2015, supplemented by a letter dated July 27, 2015, submitted by Accounting Firm requesting that the Internal Revenue Service ("Service") grant Taxpayer an extension of time under Treas. Reg. §§ 301.9100-1 and 301.9100-3 to file Form 4876-A ("Election To Be Treated as an Interest Charge DISC") for Taxpayer's first taxable year.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and Accounting Firm and accompanied by penalty of perjury statements executed by appropriate parties. This office has not verified any of the materials submitted in support of the request for ruling. It is subject to verification on examination.

FACTS

Taxpayer is a domestic corporation wholly owned by Shareholder, a limited liability company classified as a partnership for federal income tax purposes. Taxpayer was formed on Date 1 to serve as an interest charge domestic international sales corporation ("IC-DISC"). Taxpayer operates under a commission arrangement with Shareholder.

Individuals A, B, and C collectively own 85% of Shareholder. Individual A is an officer of Shareholder and of Taxpayer. Corporation A, a domestic corporation, owns 10% of Shareholder. Corporation B, a foreign corporation, owns 5% of Shareholder.

Shortly before Date 1, owners of Shareholder consulted Accounting Firm about benefits that an IC-DISC may provide. After deciding to form Taxpayer as an IC-DISC, Shareholder retained Consulting Firm to organize Taxpayer as a corporation and to prepare Form 4876-A. Consulting Firm incorporated Taxpayer on Date 1, prepared Form 4876-A to take effect as of Date 1, and provided the form to Accounting Firm for signature and filing. Upon formation, Taxpayer operated as an IC-DISC. On Date 2, about a month later, Individual A signed the Form 4876-A on behalf of Taxpayer and Shareholder.

The next year, on or around Date 3, Taxpayer's first federal income tax return was filed using Form 1120-IC-DISC. A few months later, Taxpayer received a letter from the Service dated Date 4 stating that the return could not be processed because there was no record of Taxpayer having filed Form 4876-A. Having thus learned of a problem, Accounting Firm and Shareholder searched their records. Accounting Firm found the original signed Form 4876-A in its file. Accounting Firm and Shareholder concluded that they had each mistakenly believed the other timely mailed the form, and the form was not filed.

Upon discovery of this error, in order to be treated as an IC-DISC beginning on Date 1, Taxpayer requested a ruling granting an extension of time to file Form 4876-A for its first taxable year.

LAW AND ANALYSIS

Section 992(b)(1)(A) of the Internal Revenue Code (the “Code”) provides that an election by a corporation to be treated as a DISC¹ shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

Section 992(b)(1)(B) of the Code provides that such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on such first day of the first taxable year for which such election is effective consent to such election.

Temporary Treasury Regulation § 1.921-1T(b)(1) provides, in part, that a corporation electing IC-DISC status must file Form 4876-A and that a corporation electing to be treated as an IC-DISC for its first taxable year shall make its election within 90 days after the beginning of that year.

Treasury Regulation § 301.9100-1(c) provides, in part, that the Commissioner, in exercising the Commissioner’s discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I.

Treasury Regulation § 301.9100-1(b) provides that a regulatory election is an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. For this purpose, an election includes an application for relief in respect of tax.

Treasury Regulation § 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 (automatic extensions) must be made under the rules of Treas. Reg. § 301.9100-3. Requests for relief subject to Treas. Reg. § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the Government.

Based on the facts and representations submitted with Taxpayer’s ruling request, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file Form

¹ As used in this letter, the terms “IC-DISC” and “DISC” have the same meaning.

4876-A. Such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer's first taxable year.

The granting of an extension in this ruling letter is not a determination that Taxpayer is otherwise eligible to make the election or to claim IC-DISC status or benefits. See Treas. Reg. § 301.9100-1(a). Taxpayer should attach a copy of this ruling letter to its Federal income tax return for the taxable years to which this letter applies.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.²

Pursuant to a Power of Attorney on file in this office, a copy of this ruling letter is being furnished to your authorized representatives.

Sincerely,

Robert Z. Kelley
Acting Assistant to the Branch Chief, Branch 6
Office of Associate Chief Counsel (International)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

² For example, we express no opinion as to whether section 996(g) would apply with respect to Corporation B.